



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Review and Discussion of Current Regulations Pertaining to Food Vending Vehicles

MEETING DATE: July 19, 2006

PREPARED BY: Community Improvement Manager

RECOMMENDED ACTION: That the City Council review and discuss the information provided by Community Development Department Staff regarding the current regulations pertaining to food vending vehicles.

BACKGROUND INFORMATION: The Community Development Department first reviewed the issue of the nuisance conditions that are created by mobile food vendors and other itinerant vendors throughout the community in 1999. At the time, an Ordinance that would expand Lodi Municipal Code Section 9.18 – Vending on Streets and Sidewalks was proposed that would include regulations pertaining to vending from private property. The genesis of that proposal was from the complaints of the local business community and local residents.

The local business community has had issue with the influx of itinerant vendors into this community for some time. This includes the local florists who are affected by the number of flower and gift basket vendors that can be found on almost every major thoroughfare and intersection before Valentines Day and Mothers Day each year, as well as the local car and recreational vehicle dealerships who are affected by the out-of-town dealers that set up weekend sales events in major shopping center parking lots.

The entire community bears the visual impact that these itinerant vendors create as they set up impromptu booths in parking lots and along available frontages selling sunglasses, rugs, flags, statuettes, paintings and other wares. However, the itinerant vendor that is the most prevalent throughout the community is the mobile food vendor (lunch wagons).

The 1999 proposal, which eventually was tabled by Council, was the culmination of a great deal of work that included a public meeting with the local food vendors to receive their input and comment. At that meeting the message was made clear that it was not the City's intent to prohibit the vending activities, but to provide clear and concise regulations to prevent safety, traffic and health hazards, as well as preserve the peace, safety and welfare of the community.

Now, seven years later, we look to resolve these issues once again. Our goal under the new Community Development Director has been to address these issues in the revision of the current Zoning Ordinance. The new Development Code would provide the clear and concise language necessary to make not only

APPROVED:

Blair King, City Manager

the enforcement and abatement easier, but also provide clearer guidance to the vendors as to what the regulations are for their continued operation.

The conditions presented in each of the aforementioned itinerant vending activities can be identified as public nuisance and/or hazardous conditions, and accordingly, we have various tools or methods to address the abatement of those conditions. What follows is a summary of the various issues and remedies available at this point.

Land Use Issues – Private Property

There are several sections of the current Zoning Ordinance that can be applied to the vending issue as it occurs on private property or off the public right-of-way.

In 1997, under Section 17.57 General Regulations and Requirements, a general requirement was created mandating that business, with few exceptions, must be conducted inside an enclosed building.

17.57.170 Enclosed building requirement.

Stores, shops or businesses permitted in any commercial or industrial district shall be conducted wholly within an enclosed building unless the specific use and zone permit otherwise. Vehicle sales lots, service stations, parking lots, small recycling collection facilities and those businesses that typically require outdoor storage or activities will be exempt from this requirement. (Ord. 1648 § 1 (part), 1997)

Absent that general requirement, references to such a requirement were scattered and inconsistent throughout the rest of the ordinance pertaining to each zoning designation, as noted in the following review of allowed uses within each zoning district.

The majority of these vending activities occur in either C-1, C-2, C-S, M-1, M-2 or PD (Planned Development) Districts and regulations pertaining to the food related activities in those districts are as follows:

C-1

- Eating Places are an allowed use, except those involving dancing, entertainment or alcohol.
- There is a general criteria pertaining to allowed uses within this district that mentions that business activities be conducted wholly within an enclosed building.

C-2

- Any type of Eating and Drinking Establishment is allowed.
- There is no criteria regarding conducting business within an enclosed building.

C-S

- Refers back to allowed uses within a C-1 District.

M-1

- Refers back to allowed uses within C-M District, which refers back to allowed uses within C-2 District.
- The requirements of the C-M District does include specific language regarding conduct within a building.

17.42.030 Enclosure of uses-Off-premises effects.

Every use in a C-M zone shall be subject to the following conditions:

A. All uses shall be conducted within a completely-enclosed building or within an area enclosed on all sides with a solid wall, screened fence or uniformly painted fence not less than six feet in height, except that uses permitted in the open in the C-2 zone shall be permitted in the open in the C-M zone.

M-2

- Refers back to allowed uses within M-1 District.

P-D

- The PD District where a food vendor happens to be operating, PD(17) which is located at Turner Rd. and Church St., requires that any and all uses, except SFD, must first obtain a Use Permit from the Planning Commission. (LMC 17.33.040)
- The parcel within PD(17) where the vendor is operating is classified for light industrial uses and must conform with the requirements of the C-M District.

Additional Zoning/Land Use Issues

In addition to the regulations pertaining to allowed uses, there are also other Zoning Ordinance regulations that are impacted and/or can be brought into play in order to address the food vending issues.

As each commercial property is developed, there are specific off-street parking requirements based upon the specific use and/or size of the building. In many of the locations where food vending vehicles are setting up, the required parking spaces are being taken up by the food vending vehicles, as well as the tables, tents or awnings that they deploy. As noted in the code section referenced below, this is not allowed.

17.60.040 Use for other purposes.

No portions of a required parking facility may be built upon with new structures or additions, or utilized for other purposes, unless a substitute parking facility is provided that meets the requirements of this chapter. (Prior code § 27-13(b)(4) (part))

In several other locations where these food vendors have established a permanent operation, the properties themselves are either unpaved and/or undeveloped, lacking the appropriate controls for ingress and egress which creates a traffic hazard, and/or controls for storm water contamination to prevent dust and dirt from being tracked onto the adjacent streets and sidewalks. The following language with Section 17.78 Certificates of Occupancy provides some method of addressing this:

17.78.010 Required.

No vacant land shall be used or occupied, except for agricultural purposes, and no building erected, structurally altered or moved after the effective date of the ordinance from which this section derives shall be occupied or used until a certificate of occupancy has been issued by the building inspector. (Prior code § 27-17 (part))

17.78.020 Land.

A certificate of occupancy for the use of vacant land or for a change in the character of the use of land, as provided in this chapter, except for agricultural purposes, shall be applied for before such land shall be occupied or used. The certificate shall be issued within three days after the application has been made, provided such use is in conformity with the provisions of this title. (Prior code § 27-17(a))

The Certificate of Occupancy process has been used for temporary uses, such as Christmas tree lots, car tent sales, and other seasonal events or activities. The process is very outdated and inadequate, as it requires that the Building Official issue "The certificate...within three days after the application has been made...",

and it does not take into consideration the scope of what is required for an adequate review of such a development by all affected departments, nor does it allow for the recovery of costs related to the review and issuance of the Certificate.

Finally, at several of the locations where food vendors routinely operate, there are some conflicting or incompatible uses that need to be addressed. Several of these sites may be on commercially zoned properties, which are currently occupied by legal/non-conforming residential dwellings. This creates a mix of residential and commercial uses upon the property that in the past has been discouraged unless planned and developed as such, rather than occurring by happenstance.

Health and Safety Issues

There are definite health and safety issues present at most of the mobile food vending locations and several of the other itinerant vendor sites. What follows is a review of those issues and the related codes and regulations:

State Health Codes

From our previous work on these issues with the local Environmental Health Department (EHD), who has jurisdiction for the licensing and inspection of mobile food vendors, we have become more aware of certain conditions or situations that are likely to occur that represent a serious health and safety hazard. While they are under the jurisdiction of EHD, it is more likely that these health and safety conditions are going to be noted by City code enforcement or police personnel at a time and location that EHD would not be able to respond, usually after hours.

- Mobile Food Vendors are required, when operating from a fixed location, to have adequate restroom facilities for their employees. Those restroom facilities must be within 200 feet from their vehicle and be open and available the entire time that they operate.
 - Several of the food vendors operate in locations adjacent to existing businesses and satisfy this requirement by using the facilities at that site. There are several of these same locations where the food vendors remain on-site and operating after that business has closed and the restroom facilities are not readily available. When that occurs, EHD offices are usually closed and their health inspectors are not available for enforcement assistance.
 - Other food vendors operate during the day and/or night from locations where there are no restroom facilities available. There has been at least one documented incident of a LPD Bike Officer catching and citing a man for urinating in public against the side of a building near one of the food vending vehicles, only to find that it was the food vendor.
- Mobile Food Vendors are required to operate from a licensed commissary within San Joaquin County. All prepared food coming from the vehicle must be prepared and transferred to the food vending vehicle at that commissary. The food vending vehicle also must be returned to that commissary to be cleaned, sanitized and restocked.
 - There are several incidents where food vendors are or have been operating from unlicensed commercial locations or their residences. While this represents a zoning or land use violation, the issue of it being a health code violation is the most pressing matter.
- Mobile Food Vending vehicles are required to be self-contained for water, power and waste. At many of these locations, vendors have tapped into power and water. Just how and where these vending vehicles are getting their water is a serious health and safety concern as there are stringent requirements for the type of hose and appropriate connections. The issue of self-containment of waste is also a concern and has been an issue as we've received complaints from time to time of the vehicles purposely draining into storm drains or slowly leaking where they operate or as they transit to and from the property.

Hazardous Electrical

As stated in the previous section, several of the food vending vehicles routinely tap into power through extension cords from buildings or light standards in the parking area. This poses an electrical hazard as the electrical cords are usually run across walking or driving surfaces or the point of connection is illegally and improperly installed. There is language within the adopted Electrical Code that allows us to address these issues.

Hazardous Plumbing/Sanitation

Also stated previously, was the fact that many of the mobile food vendors tap into any available water source at a site. While the locations or existing businesses that they operate adjacent to may have been to code at the time that they were constructed or put into use, the addition of another use on the site requires compliance with current code requirements for the facilities connected to that new use, namely the water connection. While State Health Code mandates certain requirements for hoses and connections, there is clear language within the Plumbing Code that addresses fittings to prevent backflow or cross-connection contamination.

The issue of illegal dumping of waste, especially where it can come into contact with the storm drainage system, is another serious concern that is addressed by our local Municipal Code and State Law.

Related Issues

Business Licensing

One of the other issues related to any type of vending, is whether the vendor has the appropriate business license in order to operate within Lodi. The following LMC Section provides clear and concise language for us to enforce.

3.01.020 Business tax certification required.

Business taxes are imposed upon all businesses, professions, trades, vocations, enterprises, establishments, occupations or callings conducting business in the city to which a business tax may lawfully apply, in an amount established by resolution of the city council. It is unlawful for any person to transact and carry on any business, trade, vocation, enterprise, establishment, occupation or calling in the city not otherwise exempt without first having procured a business tax certificate from the city or complying with all of the applicable provisions of this chapter.

Sales Tax

An issue pertaining to vendors of merchandise and goods is whether the appropriate sales tax is being collected and whether that sales tax is being reported for the proper place of sale. We would have to rely upon some guidance from our Finance Department or Deputy City Manager regarding how to best gather and track this information.

Vending From Streets and Sidewalks

As stated previously, LMC Section 9.18 currently establishes certain guidelines for the following issues pertaining to vending from the public right-of-way:

- Remaining in one location for more than ten minutes.
- Creating a traffic hazard.

- School and intersection proximity.

Summary and Recommendations

In order to proceed, we need to first clarify the City's intent, either to provide clear regulation of these vending activities or to prohibit the activities entirely. It has been City direction to allow but regulate these vending activities, therefore we must then consider the following options.

Apply Existing Code Language

Regarding enforcement of land use regulations that pertain to food vending vehicles and other itinerant vendors, the proposed Development Code provides clearer language for enforcement than that provided in our current Zoning Ordinance. Prior to adoption of the new Development Code, we can proceed with the land use code language outlined previously.

The current code language addressing the hazardous electrical and plumbing conditions is sufficient to proceed with, and the new Administrative Enforcement Provisions adopted by Council provides us with a clear mechanism in which to process violations that are found.

Revise Current Code Language

There are two choices available under this option. In one option, the review and adoption of the Development Code is in process and is expected to be completed within the next six months. This would provide clear code language approaching this as strictly a land use issue.

In the second option, we could revisit the code amendments to Section 9.18 that were proposed in 1999 and have it back before Council for adoption. This would provide a more comprehensive approach to addressing the issues regarding vendors, whether that be food vendors or other itinerant vendors. The subsequent revision of the Development Code would then augment these new regulations, providing clearer guidance for the development of properties to accommodate vending activities.

Regardless of which option that is decided upon, the cooperation and assistance of the County Environmental Health Department (EHD) is crucial to the success of any effort pertaining to the food vendors. Any enforcement activities undertaken by City code enforcement personnel will be coordinated with the EHD so that they can follow up accordingly.

One other factor that must be considered is that a proactive enforcement project of this scope will require a substantial amount of our code enforcement resources. The Community Improvement Division has been down one inspector for the past three months and this has reduced their capabilities significantly, thereby creating a backlog of complaints. The projected return of that one inspector in July and the hopeful approval of budgeted funding for contract code enforcement services is crucial in our ability to address the current backlog and to embark on a proactive enforcement project of this nature.

FISCAL IMPACT:

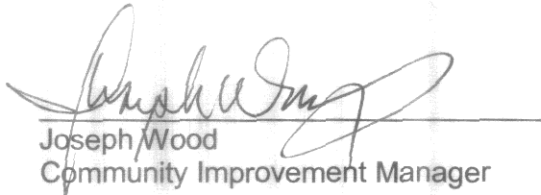
As with any code enforcement action, the initial enforcement activities would be funded through the General Fund. All follow up enforcement and abatement action would be funded through the cost recovery measures that have been established.

In accordance with the Operational Priorities that were adopted by Council in the Policy Statement for the Code Enforcement Program, committing code enforcement personnel for this enforcement project will divert them from responding to other lower priority complaints.

FUNDING AVAILABLE:

This activity would be funded through the General Fund and the Special Revenue Fund established for the Community Development Department.


Ruby Paiste, Interim Finance Director


Joseph Wood
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Concurred: 
Randy Hatch
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SJB/jmp

Attachments

cc:

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Community Improvement Division
Community Development Department
July 19, 2006

Itinerant Vendors

- Food Vending Vehicles
 - Lunch Wagons
 - 13 permanent locations throughout Lodi
 - Push Carts
 - Approximately 15-20 throughout Lodi
 - Predominantly Eastside
 - Produce Sales
 - From vehicles and from front yard stands
 - 5-10 locations throughout Lodi

Itinerant Vendors

- Various Merchandise
 - 15-20 locations throughout Lodi
 - Selling rugs, statuettes, flags, paintings.
- Flower & Gift Peddlers
 - Before each Mothers Day and Valentines Day
 - Operate from public streets & sidewalks...
 - And from private property.
 - 15-20 locations throughout Lodi

Food Vending Vehicles

- Lunch Wagons
 - Nuisance Issues
 - Sanitation
 - Hazardous Electrical
 - Traffic & Safety Hazards
 - Conflicting Uses
 - Related Issues
 - Business Licensing

Food Vending Vehicles

- Current Regulations
 - Existing Zoning Ordinance Regulations
 - Enclosed building requirements
 - Parking, paving, drainage, utility requirements
 - Existing Municipal Code Section 9.18
 - Vending from Streets and Sidewalks
 - Current Electrical Code
 - Addresses common wiring and electrical hazards.
 - State Health Code
 - Enforced by County Environmental Health Department

Food Vending Vehicles

- Proposed Regulations
 - Development Code
 - Itinerant Vendor Permit
 - Regulations on location
 - Design and operating standards
 - Proposed Revision of LMC Section 9.18
 - Vending from Streets, Sidewalks and Private Property

Proactive Enforcement Project

- Options to Consider for Enforcement
 - Whether To Regulate or Prohibit Outright
 - Approach Strictly as Land Use Issue
 - Use Current Zoning Ordinance Language
 - Adopt Development Code for Clearer Language
 - Revisit Revision of Section 9.18
 - Provide for Regulation of All Vendor Activities
 - Cover Public and Private Property

Proactive Enforcement Project

- Coordinated Enforcement
 - Work closely with SJC Environmental Health
 - Use new Administrative Enforcement Provisions
- Impact Code Enforcement Priorities
 - One of two Proactive Projects getting underway.

Proactive Enforcement Project

- Funding
 - Initial Activity Funded Through General Fund
 - Non-Compliance and Abatement Action Funded Through Cost Recovery Measures Established in Administrative Enforcement Provisions
 - Eligible for Funding Under CDBG Program for Those Sites Within the LMI Target Area.